

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

|                               |   |                                    |
|-------------------------------|---|------------------------------------|
| RASHAD BRISCOE,               | ) |                                    |
|                               | ) |                                    |
| Petitioner,                   | ) | Civil Action No. 2:19-403          |
|                               | ) |                                    |
| v.                            | ) | Judge Robert J. Colville           |
|                               | ) | Magistrate Judge Lisa Pupo Lenihan |
| MARK GARMAN and THE ATTORNEY  | ) |                                    |
| OF THE STATE OF PENNSYLVANIA, | ) |                                    |
|                               | ) |                                    |
| Respondents.                  | ) |                                    |

**ORDER OF COURT**

Before the Court is the Petition for Writ of Habeas Corpus (ECF No. 3) filed by Petitioner Rashad Briscoe. On March 8, 2021, Magistrate Judge Lisa Pupo Lenihan issued a Report and Recommendation (ECF No. 17) in which she recommended that the Court dismiss the Petition for Writ of Habeas Corpus as untimely, or, in the alternative, deny the petition. She also recommended the Court deny a certificate of appealability.

Petitioner did not file Objections to the Report and Recommendation. The district court must make a *de novo* determination of those portions of the Report and Recommendation to which objections are made. 28 U.S.C. § 636(b)(1)(C); *see also Henderson v. Carlson*, 812 F.2d 874, 877 (3d Cir. 1987). This Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The district court judge may also recommit the matter to the magistrate judge with instructions.

Upon review of the March 8, 2021 Report and Recommendation and Petitioner's Objections, as well as a review of the entire record in this matter, it is hereby ORDERED as follows:

The Court approves and adopts Judge Lenihan's Report and Recommendation in part to the extent it recommends the Petition be denied<sup>1</sup> as the Opinion of the Court. The Petition for Writ of Habeas Corpus is DENIED. The Court finds that, because jurists of reason would not find it debatable whether Petitioner's claims should be denied, Petitioner is not entitled to the issuance of a certificate of appealability. The denial of a certificate of appealability does not prevent Petitioner from appealing the order denying his petition so long as he seeks, and obtains, a certificate of appealability, from the court of appeals. *See* Fed. R .App. P. 22(b)(1), (2). The Clerk of Court shall mark this case CLOSED.

BY THE COURT:

/s/ Robert J. Colville  
Robert J. Colville  
United States District Judge

Dated: April 5, 2021

cc/ecf: All counsel of record

Rashad Briscoe  
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<sup>1</sup> Judge Lenihan recommended the Petition be dismissed on the grounds of untimeliness, which is now moot.